

### ***Status of Claims***

1. Claims 1-47 are allowed.
2. This action is response to the USPTO's Board of Patent Appeals and Interference ("Board") decision mailed on *11 September 2009* ("2009 Board Decision").
3. This Office Action is given Paper No. 20090909 and is for reference purposes only.

### ***Reasons for Allowance***

#### 1st Embodiment of McClure

4. In the 2009 Board Decision, the Board reversed the Examiner obviousness rejections and stated that "McClure discloses that an identification file requires the voter to register and cast their vote from the *same computer* (FF2) [Emphasis in original]."<sup>1</sup> For the particular prior art embodiment relied upon the Examiner to reject claims 24 and 34, the Examiner agrees.
5. The Examiner notes that "if a claim term appears in more than one claim it should be construed the same in each." *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1371, 66 USPQ2d 1801 (Fed. Cir. 2003). See also *Georgia Pacific Corp. v. United States Gypsum Co.*, 195 F.3d 1322, 1331, 52 USPQ2d 1590, 1598 (Fed. Cir. 2000) ("[A] claim term cannot be given a different meaning in the various claims of the same patent.").

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<sup>1</sup> 2009 Board Decision, Pg 8.

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6. After careful review of the 2009 Board Decision, the Examiner finds that the Board has not made any findings of fact or conclusions of law regarding differing or *alternative meanings* for claim terms. In other words, the Board has not stated that a particular meaning of a claim term (or a claim phrase) applies at one time, and another alternative meaning applies at another time.
7. The Examiner therefore finds that based upon a review of the original specification and because claims 24 and 34 were original claims, the specification does not otherwise provide for differing or alternative meanings of claim terms. In other words, the specification does not state when or at what time a particular meaning applies and alternatively, when or at what time a particular meaning does not apply.
8. Therefore in light of the above, the Examiner construes the "second computer" and "first computer" as recited in claim 24 (and claim 34) as the **same** "second computer" and "first computer" as recited in claims 1, 20, 23, 32, 41, and 46.

#### Other Embodiments in McClure

9. McClure also discloses embodiments where the registered voter walks up to the voting area, has their name checked in the computer system to see if they are registered, and is then given access to a second, voting computer. In other words, McClure discloses:
- a. a central computer **42** at election headquarters **44**. EAS **60** is a custom developed software program that runs on the central computer **42**. The system is shown in Figure 31.

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- b. Voting tables **56** are used for voting only. They are held in the warehouse between elections (C23, L52-53). The process for removing the voting tables is shown in Figure 28.
- c. Each voting station is capable of eventually communicating data to the central computer. (C5, L43-45).
- d. Any last minute changes to the ballot are transferred to the second computer (voting computer) on election day. (C40, L34-38).
- e. To begin the voting sequence, a voter presents the necessary identification to the election official. (C42, ~L37-38).
- f. To validate that the voter is eligible to vote, the preferred method is for the voter to present identification to the official who then locates the voter in the voter registration log produced by the EAS **60**. The log contains the name of the voter with an accompanying bar code designation. Using the bar code scanner that is connected to the TNC **50**, the official scans the code for that voter. At this point, the voter has been verified to be in the proper precinct, it has been verified that he/she has not already voted. (C42, ~L39-48).
- g. The voter next steps into the voting booth (making it the *first time* the voter has seen the voting computer (or second computer) and casts their ballot. (C42, L60-65).
- h. After voting, the MMUs **58** (at the second computer) are transferred back to central computer **42** (C44, L27-28).

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10. Based upon the above, the Examiner finds that the log of eligible voters must reside on central computer **42**. Because the voting computers are locked in the warehouse between elections, the second voting computers can not be used to "register" the voter. As noted by the Board, the second voting computers may be used to "re-register" the voter.
11. Because the voters registration information (e.g. voter name as noted in the "log" above) is located on central computer **42**, the registration information must have been placed on the on central computer **42** in some manner.
12. Because claims 23 was reversed by the Board, McClure can not disclose "transmitting the registration information from a first computer (or registration computer) to central computer **42**. Thus, according to the 2009 Board decision, the registration information (i.e. "electronic list" C42, L56 and "name" C42, L58) must therefore have been entered directly into central computer **42** which is located at election headquarters **44**.

### ***Conclusion***

13. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "***Comments on Statement of Reasons for Allowance.***"
14. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the examiner should be

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directed to NANCY LOAN T. LE whose telephone number is **(571) 272-7066**. The examiner can normally be reached on Monday - Friday, 9am - 6:00pm Eastern Standard Time.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANDREW J. FISCHER can be reached on **(571) 272-6779**.

16. For **official/regular communication**, the fax number for the organization where this application or proceeding is assigned is **(571) 273-8300**.

17. For **informal/draft communication**, the fax number is **(571) 273-7066 (Rightfax)**.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197 (toll-free)**.

NANCY T. LE  
Examiner, Art Unit 3621

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